

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

ELIZABETH ARIAS, §
Plaintiff, §
§
v. § C.A. NO. C-05-041
§
JO ANNE B. BARNHART, §
COMMISSIONER OF THE SOCIAL §
SECURITY ADMINISTRATION, §
Defendant. §

**MEMORANDUM OPINION AND ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

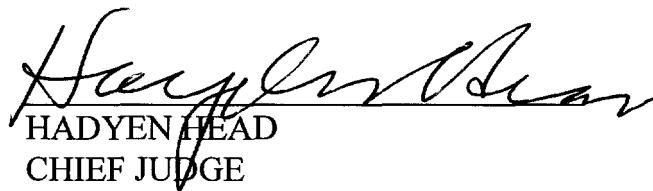
On October 17, 2005, the United States Magistrate Judge filed her Memorandum and Recommendation in this cause (D.E. 17). After ample opportunity, no objections have been filed by either party. This Court regards such omission as each party's agreement with and acceptance of the Magistrate Judge's findings of fact and conclusions of law. Having reviewed the pleadings on file, the Court finds no clear error in the Magistrate Judge's memorandum and recommendation. *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996). This Court adopts as its own the findings and conclusions of the Magistrate Judge.

The ALJ's determination that plaintiff does not suffer from a somatoform disorder because there is only occasional mention of it in the record is not supported by the evidence. All of the medical professionals involved in plaintiff's care have attributed her seizure activity to psychological causes, which coincides with the listing of somatoform disorders found at 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.07(A)(2)(e). In addition, the

ALJ's determination that plaintiff does not meet the severity criteria in Section B of the listing, regardless of the precise mental disorder diagnosis, is not supported by substantial evidence because the ALJ did not include a discussion of the differences in the opinions of plaintiff's treating physician and the other doctors who evaluated her or mention any of the *Newton* factors.

Accordingly, plaintiff's brief in support of her complaint, treated as a motion for summary judgment (D.E. 14), is GRANTED. Plaintiff's case is remanded so that a proper analysis can be made of her treating physician's assessments of her mental impairments. In addition, plaintiff's argument to consider new and material evidence (D.E. 12-1) is DENIED.

ORDERED this 28 day of Dec, 2005.


HADYEN HEAD
CHIEF JUDGE